IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Summons for Judgment No.28l of 2004

in

Summary Suit No 6l3 of 2004

M/s Saumitra Engineering Pvt Ltd.. plaintiffs

vs

M/s Shah Industries Pvt Ltd...defendants

Mr.S.Shamim i/b Shamim and co for plaintiffs

Mrs Jayshree Agarwal i/b M L Bansal for defts

CORAM: S.J.VAZIFDAR J.

Dated 25.l.2005

P C:

. The suit is filed to recover the price of the goods sold and delivered by the plaintiff to the defendant. The plaintiff raised invoices in respect of the sale of the said goods. It is an admitted fact that the plaintiff supplied the gods and defendant received and appropriated the same. It is also an admitted position that the plaintiff has not made payment for the said goods. Three defences are raised.

. Firstly it is submitted that the claim in the suit is barred by limitation. This submission is not well founded for the bar of limitation is saved by virtue of the fact that the defendant made part payment by cheque before the period of limitation expired.

. The next defence is that the entire claim was settled by a memorandum dated l0th May 2003 for a sum of Rs 4 lacs.There is no substance in this submission for clause 3 expressly staates that the said sum of Rs.4 lacs will be in full and final settlement " on the payment of the said Rs.4 lacs" as mentioned in clause 4 of the said memorandum. Admtitedly payment was not made as per clause 4 of the said memorandum. In the circumstances there is no accord and satisfaction of the plaintiff’s claim.

. The third defence is that the goods are defective. This defence was raised for the first time only in the reply to the plaintiff’s advocate’s notice demanding payment. Further as is evident from the memorandum it is the defendant supplier and not the defendant who raised this plea.

. In the circumstances there is no defence to the suit. The summons for judgment is made absolute with costs. The interest, however, after the date of filing of the suit shall be at l2% per annum. Refund of court fee as per Rules.

. For the purpose of refund of court fee, Prothonotary and Senior Master to act on the copy of this order duly authenticated by the Shirestedar/ Private Secretary.